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MEMORANDUM

TO: Committee on Legal Services

FROM: Duane Gall, Office of Legislative Legal Services

DATE: November 30, 2017

SUBJECT: Rules of the Real Estate Commission, Division of Real Estate, Department of Regulatory Agencies, concerning licensure of real estate brokers, 4 CCR 725-1 (LLS Docket No. 170405; SOS Tracking No. 2017-00396).¹

Summary of Problem Identified and Recommendation

Section 12-61-110 (4)(a), C.R.S., directs the Real Estate Commission to "require that any person licensed under [the real estate broker licensing statutes] ... renew the license on or before December 31 of every third year after issuance." But Rule D-11 of the Commission's licensing rules states that "[e]ffective January 1, 2018, each applicant who has satisfied the requirements for licensure will be issued a license expiring December 31 of the year of issue." Similarly, Rules D-17(b) and D-17(c) provide that, upon reinstatement of an expired license, "the license will be issued with an expiration date of December 31 of the year of issuance." **Because Rules D-11, D-17(b), and D-**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2018, unless the General Assembly acts by bill to postpone such expiration.

17(c) of the Real Estate Commission's rules concerning real estate broker licensing conflict with the statute, we recommend that these rules not be extended.

Analysis

1. Recent legislation changed the renewal cycle for real estate broker licenses from a three-year, anniversary-date-based cycle to a three-year, calendar-year-based cycle, but Rules D-11, D-17(b), and D-17(c) unnecessarily shorten the initial licensure period to one year.

S.B. 17-215 changed the renewal cycle for real estate broker licenses from a three-year, anniversary-date-based cycle to a three-year, calendar-year-based cycle. The relevant statutory provision is the first sentence of section 12-61-110 (4)(a), C.R.S. Before passage of S.B. 17-215, that sentence read:

12-61-110. License fees - partnership, limited liability company, and corporation licenses - rules. (4) (a) The commission shall require that any person licensed under this part 1, whether on an active or inactive basis, re-new said license **on an anniversary date every three years. ... (Emphasis added)**

After the passage of S.B. 17-215, the sentence reads:

12-61-110. License fees - partnership, limited liability company, and corporation licenses - rules. (4) (a) The commission shall require that any person licensed under this part 1, whether on an active or inactive basis, re-new the license **on or before December 31 of every third year after issuance. ... (Emphasis added)**

Rule D-11 states, in its entirety:

D-11. Initial license.

Effective January 1, 2018, each applicant who has satisfied the requirements for licensure will be issued a license expiring **December 31 of the year of issue**. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one and expiring on December 31 of year three. **(Emphasis added)**

Under Rule D-11, therefore, commencing January 1, 2018, every new real estate broker's license will expire within its first year. Only upon renewal of that license will the three-year, calendar-year-based cycle commence. This contravenes the clearly stated requirement in section 12-61-110 (4)(a), C.R.S., that every license be subject to

renewal "on or before December 31 of every **third** year after issuance." (**Emphasis added**)

Similarly, under Rules D-17(b) and D-17(c), a reinstated license is subject to an initial license period ending December 31 of the year of issuance, followed by successive three-year periods:

D-17. Transition period license reinstatements.

An expired license may be reinstated as follows:

(b) If proper application is made more than thirty-one days but within one year after the date of expiration of a license, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee, the license will be issued with **an expiration date of December 31 of the year of issuance**. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one and expiring on December 31 of year three.

(c) If proper application is made more than one year but within three years after the date of expiration of a license, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee, the license will be issued with **an expiration date of December 31 of the year of issuance**. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one and expiring on December 31 of year three. (**Emphases added**)

The stated purpose of these rules is "to amend or repeal existing rules with respect to transitioning a real estate broker's license cycle from an anniversary year to a calendar year cycle as mandated by SB17-215."² However, only Rule D-13, dealing with license renewals, appears to make the transition in a manner consistent with that legislation. Rule D-13 states, in its entirety:

D-13. Transition period license renewals.

Upon receipt of a complete and satisfactory application accompanied with payment of the appropriate fee, the Commission will renew a license expiring on the anniversary date in the years of 2018, 2019 or 2020, for a period of time equal to two years plus the remaining days in the third year to reach December 31. Thereafter, a licensee will renew a license on a calendar year cycle commencing on January 1 of year one and expiring on December 31 of year three.

² Notice of Proposed Permanent Rulemaking Hearing, October 3, 2017, Secretary of State tracking no. 2017-00396.

Thus, under Rule D-13, during the transition period of 2018, 2019, and 2020 (and only in those years), the nominal three-year term of a renewed license is trimmed by a fraction of a year so that it expires on December 31 rather than on the anniversary date of issuance. However, under Rule D-11, "[e]ffective January 1, 2018," and continuing indefinitely, every new license expires on December 31 of the year it was issued—a full two years short of the three-year term contemplated by the statute. And under Rules D-17(b) and D-17(c), similarly, every reinstated license from now on will expire on December 31 of the year of issuance. This goes beyond what is necessary for transitional purposes and is clearly contrary to the statutory directive.

Recommendation

We therefore recommend that Rules D-11, D-17(b), and D-17(c) of the Real Estate Commission's rules concerning real estate broker licensing not be extended because those rules conflict with the statute.